

Jim Martin
Chair
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

[REDACTED]

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
EH99 1SP

27 February 2024

Dear Convener,

Environmental Standards Scotland: Six Monthly Update

Environmental Standards Scotland (ESS) gave evidence to the Committee at its meeting on 25 October 2022 as part of the Committee's scrutiny of ESS' first Strategic Plan. At that meeting, it committed to updating the Committee on its work every six months. This letter provides a summary of ESS' work over the last six months (September 2023 – February 2024).

I have notified the Presiding Officer that I will step down as Chair of Environmental Standards Scotland on 31 March 2024. Dr Richard Dixon, ESS' Deputy Chair, will be Acting Chair from 1 April 2024 until a permanent Chair is appointed. Dr Dixon, and Mark Roberts, Chief Executive of ESS, will give evidence to the Committee at its meeting on Tuesday 5 March 2024.

Scottish Government's review of environmental governance

1. Section 41 of the Withdrawal from the European Union (Continuity) (Scotland) Act 2021 required the Scottish Government to consult on a review of environmental governance.

Environmental Standards Scotland
enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
0808 1964000

2. ESS [wrote](#) to the Committee on 11 October 2023 with its response to the Scottish Government's review of environmental governance.
3. ESS welcomed the review's broadly positive views of its work to date, but acknowledged that it is too early in ESS' organisational lifetime for a fuller judgement to be made.
4. Overall, ESS considered that the Scottish Government's review was too narrow in scope and represented a missed opportunity to consider environmental governance more broadly. For example, it did not consider whether there is scope to enhance accountability with improved systems for the monitoring and reporting of environmental data and performance. Furthermore, our response noted that ESS considers that greater access to environmental justice and compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters is essential and should be a key outcome in any consideration of the system of environmental governance.

Representations received

5. ESS can receive representations from members of the public, communities and organisations about concerns they have regarding environmental law and how it is implemented. Since ESS began operating on 1 October 2021, we have received a total 45 representations. Of these representations, ESS has taken substantive action on 41% of these. This action has included investigation, informal resolution and ongoing monitoring. The details of representations received are available on ESS' website [here](#).

Informal resolutions

6. In accordance with our Strategic Plan, where issues exist relating to compliance with environmental law or the effectiveness of how public bodies are implementing environmental law, ESS will try and resolve matters informally with the public bodies concerned. Over the last six months, we have achieved informal resolution in a number

Environmental Standards Scotland

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

0808 1964000

of cases. Summary reports for completed informal resolutions are available on ESS' website. In summary, they cover the following topics:

Date	Subject	Public body
4 December 2023	Bathing waters	Scottish Government
11 December 2023	Controlled Activities Regulations	Scottish Environment Protection Agency
18 December 2023	Habitats Regulations Assessment	NatureScot
31 January 2024	Public registers	Scottish Environment Protection Agency
26 February 2024	Infrastructure Investment Plan	Scottish Government

- On 28 February 2024, ESS will publish a report following a representation on the Scottish Government's Climate Change Plan. The representation asked ESS to consider recommendations from four committees of the Scottish Parliament¹, the Climate Change Committee and Audit Scotland about the Scottish Government's previous Climate Change Plan and its plans to meet annual emissions reductions targets. ESS' conclusion is that the previous Climate Change Plan did not fully meet statutory requirements.

¹ These were: the Environment, Climate Change and Land Reform; the Rural Economy and Connectivity; Economy, Energy and Fair Work; and the Local Government and Communities Committees of Session 5 of the Scottish Parliament.

8. In some cases, ESS has committed to monitor public bodies' progress in implementing agreed plans. For example, ESS has been monitoring the Scottish Environment Protection Agency's (SEPA) progress in implementing its programme to remove all physical barriers in rivers by the end of 2027 on an annual basis (the next scheduled review will be in April 2024). ESS also has agreed a programme with SEPA to re-establish and develop the public registers required by legislation. ESS will monitor and report on SEPA's progress in delivering both these programmes.

Investigations

9. ESS has been considering beginning a number of investigations based on its own analytical and monitoring work and on representations received. It will announce the launch of one of these on Monday 4 March 2024.

Climate Change Improvement Report

10. As the Committee will be aware, ESS laid an [Improvement Report](#) under section 26 of the Withdrawal from the European Union (Continuity) (Scotland) Act 2021 on 6 December 2023. The Improvement Report followed an investigation into the implementation of local authorities' climate change duties. ESS and the Scottish Government reached informal resolution on four of the five areas where ESS considered improvements were needed but failed to reach agreement in one area concerning local authorities' reporting of Scope 3 emissions. Section 30 of the Withdrawal from the European Union (Continuity) (Scotland) Act 2021 requires the Scottish Government to lay an improvement plan responding to an improvement report within six months.

Particulate matter in air

11. On 1 February 2024, ESS published a [report](#) based on its own analytical work into particulate matter in air. This work followed the publication of revised air quality guidelines by the World Health Organisation in 2021. The report recommends that the

Environmental Standards Scotland

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

0808 1964000

Scottish Government reviews its standards for particulate matter as part of its forthcoming review of the Cleaner Air for Scotland strategy. It also stresses that while the focus in recent decades has been on reducing emissions from transport, attention now needs to be broadened to other sources of pollution.

Forthcoming legislation

12. In addition to assessing public bodies' compliance with existing environmental law and examining the implementation of the effectiveness of environmental law, ESS monitors the development of new environmental law and will comment on it where it considers that it has a contribution to make. In particular, we are monitoring the Committee's scrutiny of the Scottish Government's Circular Economy (Scotland) Bill, the Scottish Government's proposed Wellbeing and Sustainable Development, Natural Environment and Human Rights Bills and Monica Lennon MSP's proposed Member's Bill on ecocide.

Community engagement

13. ESS has begun a new community engagement programme. This enables ESS to hear directly from local groups and communities about their environmental concerns. This will in turn inform ESS' future work and should also increase public understanding of ESS' role and remit.

Organisational development

14. ESS laid its first complete [annual report and accounts](#) for the 18 months from 1 October 2021 to 31 March 2023 in the Parliament on 26 October 2023. Since its first day of full operation on 1 October 2021, ESS has increased its staffing from 10 people to its current complement of 23 (22 full time equivalents). ESS is currently working to establish a shared office space with Consumer Scotland (another recently established non-ministerial office) in Thistle House, Haymarket, Edinburgh.

Environmental Standards Scotland

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

0808 1964000

I hope this update is helpful to the Committee.

Yours faithfully,

Jim Martin

Chair

Environmental Standards Scotland

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

0808 1964000